BEFORE THE WORKERS COMPENSATION APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

AVA J. FIENE	)	
Claimant	)	
V.	)	
	)	
STATE OF KANSAS	)	Docket No. 1,065,475
Respondent	)	
AND	)	
	)	
STATE SELF INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Respondent and insurance carrier (respondent) request review of Administrative Law Judge Gary K. Jones' May 14, 2014 preliminary hearing Order. Claimant appeared pro se. Jeffery R. Brewer of Wichita appeared for respondent.

The record on appeal is the same as that considered by the judge and consists of the May 13, 2014 preliminary hearing transcript and exhibits thereto, in addition to all pleadings contained in the administrative file.

ISSUES

On March 27, 2013, claimant walked to her car to retrieve some work books from a state vehicle when she discovered the car was locked. As she turned around to go back to her house to get the keys, her right foot got stuck and she fell on concrete.

The preliminary hearing Order found claimant's fall was not caused by a neutral risk, an activity of day-to-day living or an idiopathic cause. The judge concluded claimant's injuries arose out of and in the course of her employment.

While respondent concedes claimant was in the course of her employment at the time of the accident,[1] it argues claimant's accident did not arise out of her employment. Respondent asserts claimant's accident was the non-compensable result of a neutral or personal risk, an activity of day-to-day living or an idiopathic cause. Claimant provided no brief.

[1] Respondent's Brief at 2.

The only issue for the Board's review is: did claimant's accident arise out of her employment?

FINDINGS OF FACT

Claimant is an inspector for the Kansas Board of Cosmetology. She has a home office. On March 27, 2013, she returned home after performing inspections. She parked the state car in her driveway. She went into her house to put her laptop away. She headed back to the car to retrieve work books. The doors were locked and she turned back to the house to get her car keys. When she took a step forward, her right foot "felt like it had suction cups on it."[2] She fell when looking down to see what caused her foot to stick to the ground. She sustained facial injuries and broke her left wrist.

Claimant completed an Injured Employee's Report of Injury on April 4, 2013. She described her accident as follows:

> going to state car to get the rest of my Book/papers. Right foot hit black top Driveway. foot stopped and I looked down at foot, the rest of my body kept going [and] I hit my head on cement, broke my glasses, and my right wrist. Ambulance took me to hospital. I couldn't get up.[3]

Claimant underwent treatment and was off work until May 1, 2013. She filed an application for hearing on May 16, alleging that she fell after her right foot hit the blacktop.

At the preliminary hearing, claimant testified she was walking normally, wearing regular shoes and not carrying anything. While she acknowledged having prior knee problems, she denied those problems contributed to her fall. When asked what might have caused her fall, claimant testified she could not come up with any reason, other than her foot got stuck on the blacktop when she was walking and she fell. She did not have a blackout or seizure, she did not trip over anything, she is not diabetic, she was not under the influence of drugs or alcohol, and there was no snow or ice on the ground. She has lived at her residence for 30 years and never had a prior problem traversing her driveway.

The judge's May 14, 2014 Order states, in part:

> A neutral risk is one that has no particular employment or personal character. Walking on various and potentially sticky surfaces was an inherent part of claimant's job duties. The risk of falling was part of the job and not a neutral risk.
>
> Retrieving work materials from the state car was not an activity of day-to-day living. Claimant would not have been walking to the state car if she were not working for respondent. It is true, of course, that every day people walk to their cars and run the risk of falling while doing that. But in this case claimant was performing

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[2] P.H. Trans. at 14.

[3] *Id.*, Cl. Ex. 4.

her work duties while walking to her car. See *Paula Curtis v. St. Raphael Nursing Services, Inc.,* No. 1,064,498, 2013 WL 6920091 (Kan. Work. Comp. App. Bd. Dec. 16, 2013).

The evidence indicated that claimant's foot stuck to the blacktop surface. The cause of the fall was not idiopathic or unknown.

The Court finds that claimant's injuries did arise out of and in the course of her employment and are compensable.

Respondent filed a timely appeal.

PRINCIPLES OF LAW

An employer is liable to pay compensation for an employee's personal injury by accident arising out of and in the course of employment.[4] It is claimant's burden to prove entitlement to benefits by a preponderance of the credible evidence.[5]

Whether an accident arises out of and in the course of the worker's employment depends upon the facts.[6] The phrases arising "out of" and "in the course of" employment have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[7]

K.S.A. 2012 Supp. 44-508 states in part:

> (d) "Accident" means an undesigned, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur

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[4] K.S.A. 2012 Supp. 44-501b(b).

[5] K.S.A. 2012 Supp. 44-501b(c) and K.S.A. 2012 Supp. 44-508(h).

[6] *Kindel v. Ferco Rental, Inc*., 258 Kan. 272, 278, 899 P.2d 1058 (1995).

[7] *Id*.

during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

. . .

(B) An injury by accident shall be deemed to arise out of employment only if:

(I) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3)(A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(I) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

. . .

(h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

ANALYSIS

Claimant's accidental injury arose out of her employment.

This Board Member affirms the preliminary hearing Order. Both claimant's accident and injury were not the result of the normal activities of day-to-day living, a neutral risk with no particular employment or personal character, a personal risk or an idiopathic cause. Rather, she was hurt because her foot was stuck on the blacktop when she was carrying out her job duties. The fact claimant was injured on her property, where she has lived for 30 years does not exclude her accidental injury from otherwise arising out of her employment.

CONCLUSIONS

WHEREFORE, the undersigned Board Member affirms the May 14, 2014 preliminary hearing order.[8]

IT IS SO ORDERED.

Dated this _____ day of July 2014.

_____
HONORABLE JOHN F. CARPINELLI
BOARD MEMBER

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Honorable Gary K. Jones

[8] By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim. Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.